

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 697

Introduced by Assembly Member Charles Calderon

February 26, 2009

An act to amend ~~Section 19136.8~~ and repeal *Section 19138* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 697, as amended, Charles Calderon. ~~Income and corporation Corporation taxes: underpayments: underpayments: penalty.~~

The Corporation Tax Law, for taxable years beginning on or after January 1, 2003, imposes a penalty on a tax payer with an understatement of tax in excess of \$1,000,000 in an amount equal to 20% of that understatement.

This bill would limit the imposition of the penalty to taxable years beginning before January 1, 2008, and would repeal the penalty provisions on December 1, 2010.

~~Existing income and corporation tax laws impose a penalty for specified underpayments of tax, except for, among other things, an underpayment created or increased by the disallowance of a specified hiring credit.~~

~~This bill would make clarifying changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 19138 of the Revenue and Taxation Code*
2 *is amended to read:*

3 19138. (a) (1) A taxpayer subject to the tax imposed under
4 Part 11 (commencing with Section 23001) with an understatement
5 of tax in excess of one million dollars (\$1,000,000) for any taxable
6 year shall be subject to the penalty imposed ~~under~~ *by* this section.

7 (2) For taxpayers that are required to be included in a combined
8 report under Section 25101 or authorized to be included in a
9 combined report under Section 25101.15, the threshold amount
10 prescribed in paragraph (1) shall apply to the aggregate amount
11 of tax liability under Part 11 (commencing with Section 23001)
12 for all taxpayers that are required to be or authorized to be included
13 in a combined report.

14 (b) The penalty under this section shall be an amount equal to
15 20 percent of any understatement of tax. For purposes of this
16 section, “understatement of tax” means the amount by which the
17 tax imposed by Part 11 (commencing with Section 23001) exceeds
18 the amount of tax shown on an original return or shown on an
19 amended return filed on or before the original or extended due
20 date of the return for the taxable year. For any taxable year
21 beginning before January 1, 2008, the amount of tax paid on or
22 before May 31, 2009, and shown on an amended return filed on
23 or before May 31, 2009, shall be treated as the amount of tax shown
24 on an original return for purposes of this section.

25 (c) The penalty imposed by this section shall be in addition to
26 any other penalty imposed under Part 11 (commencing with Section
27 23001) or this part.

28 (d) Article 3 (commencing with Section 19031), relating to
29 deficiency assessments, shall not apply with respect to the
30 assessment or collection of any penalty imposed by subdivision
31 (a).

32 (e) A refund or credit for any amounts paid to satisfy a penalty
33 imposed ~~under~~ *by* this section may be allowed only on the grounds
34 that the amount of the penalty was not properly computed by the
35 Franchise Tax Board.

36 (f) (1) No penalty shall be imposed under this section on any
37 understatement to the extent that the understatement is attributable

1 to a change in law that is enacted, promulgated, issued, or becomes
2 final after the earlier of either of the following dates:

3 (A) The date the taxpayer files the return for the taxable year
4 for which the change is operative.

5 (B) The extended due date for the return of the taxpayer for the
6 taxable year for which the change is operative.

7 (2) For purposes of this subdivision, a “change of law” means
8 a statutory change or an interpretation of law or rule of law by
9 regulation, legal ruling of counsel, within the meaning of
10 subdivision (b) of Section 11340.9 of the Government Code, or a
11 published federal or California court decision.

12 (3) The Franchise Tax Board shall implement this subdivision
13 in a reasonable manner.

14 (g) No penalty shall be imposed ~~under~~ by this section to the
15 extent that a taxpayer’s understatement is attributable to the
16 taxpayer’s reasonable reliance on written advice of the Franchise
17 Tax Board, but only if the written advice was a legal ruling by the
18 Chief Counsel, within the meaning of paragraph (1) of subdivision
19 (a) of Section 21012.

20 (h) This section shall apply to each taxable year beginning on
21 or after January 1, 2003, *and before January 1, 2008*, for which
22 the statute of limitations on assessment has not expired.

23 (i) *This section shall remain in effect only until December 1,*
24 *2010, and as of that date is repealed.*

25 ~~SECTION 1. Section 19136.8 of the Revenue and Taxation~~
26 ~~Code, as added by Section 5 of Chapter 10 of the 3rd Extraordinary~~
27 ~~Session of the Statutes of 2009, is amended to read:~~

28 ~~19136.8. (a) No addition to tax shall be made under Section~~
29 ~~19136 with respect to any underpayment of an installment to the~~
30 ~~extent that the underpayment was created or increased by the~~
31 ~~disallowance of a credit under subdivision (g) of Section 17053.80.~~

32 ~~(b) No addition to tax shall be made under Section 19142 with~~
33 ~~respect to any underpayment of an installment to the extent that~~
34 ~~the underpayment was created or increased by the disallowance~~
35 ~~of a credit under subdivision (g) of Section 23623.~~

36 ~~(c) The Franchise Tax Board shall adopt procedures, forms, and~~
37 ~~instructions necessary to implement this section in a reasonable~~
38 ~~manner.~~